

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
ST. JOSEPH DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 05-06002-01-CR-SJ-GAF
)	
LISA M. MONTGOMERY,)	
)	
Defendant.)	

**GOVERNMENT’S SUGGESTIONS REGARDING A
SCHEDULING AND TRIAL ORDER**

COMES NOW the United States of America, by and through Todd P. Graves, United States Attorney, and Matt J. Whitworth, Deputy United States Attorney, both for the Western District of Missouri, and submit for the Court’s consideration the following suggestions agreed to by the parties regarding a “Scheduling and Trial Order”:

I. SCHEDULING CONFERENCE

Present for a scheduling conference in the United States Attorney’s Office on February 9, 2005 were defendant’s counsel, Anita L. Burns and Susan M. Hunt, and counsel for the government, Matt J. Whitworth, Roseann Ketchmark, and Cynthia L. Phillips. The following matters were discussed and agreed upon by both parties at the scheduling conference:

A. DISCOVERY

Defendant has no prior convictions.
The Government has incriminating statements of defendant.
Evidence was obtained by search and seizure incident to consent and search warrant.
There is no electronic surveillance.
There were no identification proceedings, use of lineups, or photographs.
There are no informants.
There have been no inducements to witnesses.
There will be expert witnesses.
There is Brady or Giglio material.

B. DEFENSES

Defendant does not anticipate a competency motion

Defendant may rely on a defense of insanity or diminished mental responsibility, and if that defense is relied on will file motions under Rule 12.2. of the Federal Rules of Criminal Procedure.

Defendant does not anticipate an alibi defense.

Defendant is relying on the defense of general denial.

C. RELEVANT OFFENSE CONDUCT

There is not relevant offense conduct.

There is Rule 404(b) material.

D. JENCKS ACT

Counsel for the government and defendant agreed to voluntarily provide Jencks Act material at least by February 23, 2006. Any new discovery found after that date will be furnished as soon as it is discovered.

II. TRIAL SETTING

The government is ordered to file its Notice of Intention to Seek the Death Penalty on or before September 16, 2005.

The parties agreed that the case should be set for trial on the Joint Criminal Jury Trial Docket commencing on April 24, 2006. A final pretrial conference is set for March 27, 2006.

III. DISCOVERY PROVIDED BY THE GOVERNMENT

_____ Within 10 days of the Scheduling Order by the Court, the government agreed to disclose or make available for inspection, copying, or photographing to defense counsel, all discoverable material pursuant to Rule 16 within the possession, custody, and control of the government or the existence of which is known or by the exercise of due diligence may become known to the government.

IV. DISCOVERY PROVIDED BY THE DEFENDANT

A. DOCUMENTS/REPORTS/TESTS

Upon compliance with the government's discovery obligations under sections III above, the defendant agreed to permit the government to inspect, copy, or photograph any evidence which the defendant intends to introduce as evidence in chief at the trial, including any results or reports of physical or mental examinations.

B. ALIBI EVIDENCE

1. Within thirty days from the date of this Order, the defendant agreed to serve upon the government a written notice of the defendant's intention to offer a defense of alibi.

2. Within ten days thereafter, but in no event less than ten days before trial, the government agreed to serve upon the defendant a written notice stating the names and addresses of the witnesses upon whom the government intends to rely to establish the defendant's presence at the scene of the alleged offense and any other witnesses to be relied on to rebut testimony of any of the defendant's alibi witnesses.

V. EXPERT TESTIMONY

A. RULE 16(a)(1)(E) EXPERTS

_____. 1. No later than February 23, 2006, the government agreed to disclose to the defendant a written summary of testimony, other than expert mental health testimony, that the Government intends to use under Rules 702, 703, or 705 of the Federal Rules of Evidence during its case-in-chief at trial.

2. No later than March 27, 2006, the defendant agreed to disclose to the government a written summary of testimony, other than expert mental health testimony, that the defendant intends to use under Rules 702, 703, or 705 of the Federal Rules of Evidence as evidence at trial.

____ B. MENTAL HEALTH EXPERTS/EVIDENCE

____ 1. If the defendant intends to rely on the defense of insanity at the time of the alleged offense, or intends to introduce expert testimony relating to a mental condition bearing on either the issue of guilt or punishment, she shall file on or before January 23, 2006, a Notice in compliance with Rule 12.2(a) and 12.2(b) of the Federal Rules of Criminal Procedure.

____ 2. If the defendant provides Notice under Rule 12.2(a) the Court shall order the defendant to be examined under 18 U.S.C. 4242. If the defendant provides Notice under Rule 12.2(b), and the government files Motion for a mental examination of the defendant, the Court may order the defendant to be examined under procedures ordered by the Court.

3. If the defendant gives Notice under Rule 12.2(b) and an examination is conducted by the government under Rule 12.2(c)(1), those results must be sealed and not disclosed to any attorney for the government or the defendant. If the defendant is found guilty and confirms her intent to rely on mental health expert testimony at the penalty phase those results may be disclosed to the attorney for the government.

4. After disclosure of the results of the government's mental examination of the defendant to the defense, the defense must disclose to the government the results and reports of any mental examination conducted by the defendant's expert about which the defendant intends to introduce expert testimony.

C. DAUBERT CHALLENGES

_____The parties agreed that any motions seeking to exclude or limit expert testimony should be filed in writing no later than March 10, 2006. Suggestions in response should be filed on or before March 27, 2006.

VI. EVIDENCE FAVORABLE TO THE DEFENSE

_____A. BRADY EVIDENCE

_____Within ten days from the date of this Order, the government agreed to disclose all evidence favorable to the defendant within the meaning of Brady v. Maryland.

_____B. GIGLIO IMPEACHMENT EVIDENCE

_____No later than February 23, 2006, the government agreed to disclose all evidence which may tend to adversely affect the credibility of any person called as a witness by the government pursuant to Giglio v. United States and United States v. Agurs.

_____C. ENTRAPMENT EVIDENCE

_____Within ten days from the date of this Order, the government agreed to provide discovery, inspection, and copying or photographing of any information suggesting entrapment of the defendant which is within the possession, custody, or control of the government or the exercise of which is known or by the exercise of due diligence may become known to the government attorney. _____

_____D. WITNESS INDUCEMENTS

_____No later than March 27, 2006, the government agreed to provide written disclosure of: (a) the name(s) and address(es) of the witness(es) to whom the government has made a promise;

(b) all promises or inducements made to any witness(es); © all agreements entered into with any witness(es); and (d) the amount of money or other remuneration given to any witness(es).

_____E. INFORMANTS

_____ Unless the government has made a claim of privilege as to an informant, no later than February 23, 2006, the government agreed to provide: (a) the name(s) and address(es) of the informant(s); (b) all promises or inducements to the informant(s); (c) all agreements entered into with the informant(s); (d) the amount of money or other remuneration given to the informant(s); (e) identification of the informant's prior testimony; (f) evidence of psychiatric treatment; (g) evidence of the informant's narcotic habit; and (h) the name, address, and phone number for the lawyer(s) for the informant(s) if represented by counsel. If an informant objects to the disclosure of his or her address, the government shall produce the informant to defense counsel for a determination of whether or not the informant will consent to an interview.

VII. PRETRIAL FILINGS

_____A. PRETRIAL MOTIONS

_____ On or before December 26, 2005, the parties agreed to file any relevant pretrial motions. Any suggestions in opposition shall be filed on or before January 24, 2006. For defendants who are represented by counsel, the Court will only accept pretrial filings made by counsel. Pro se filings will not be accepted for defendants who are represented by counsel.

_____B. RELEVANT OFFENSE CONDUCT

_____ Within ten days of trial or a change of plea hearing, the government agreed to disclose all information in its possession on which it will rely to establish "relevant offense conduct" or to establish an upward departure under the Federal Sentencing Guidelines.

_____ C. RULE 404(b) EVIDENCE

_____ The government agreed to provide written notice of all prior and subsequent acts and convictions intended to prove knowledge, intent, or other elements identified in Rule 404(b) of the Federal Rules of Evidence no later than February 23, 2006.

D. WITNESS LISTS

The government agreed to supply in writing witness lists which shall include the name and address of each witness whom counsel intends to call in its case-in-chief, together with any record of prior felony convictions for such witness, no later than March 10, 2006. The defendant is directed to supply the same no later than March 27, 2006. If a new witness is discovered after counsel prepares its witness list, either prior to trial or during trial, counsel agreed to promptly notify opposing defense and provide the discovery identified above.

E. EXHIBIT LISTS

The government agreed to supply in writing exhibit lists which shall include a description of each exhibit, pre-marked for identification, that counsel intends to offer in its case-in-chief no later than February 8, 2006. The defendant agreed to supply the same no later than March 27, 2006.

F. MOTIONS IN LIMINE

No later than February 23, 2006, the parties agreed to file any motions in limine seeking to exclude evidence from trial. Any suggestions in opposition to the motions in limine should be filed no later than March 10, 2006.

G. STIPULATIONS

_____Any proposed stipulations should be provided in writing to opposing counsel and the Court no later than February 23, 2006.

H. STATEMENTS PRESENTING BRUTON ISSUES

There are no co-defendants and thus no Bruton issue.

I. JUROR QUESTIONNAIRES

The parties agreed to provide a final proposed juror questionnaire to the Court January 24, 2006.

WHEREFORE, the government respectfully requests the Court to issue a “Scheduling and Trial Order” which includes the terms and suggestions herein, as agreed to by the parties.

Respectfully submitted,

Todd P. Graves
United States Attorney

By */s/ Matt J. Whitworth*

Matt J. Whitworth #33322
Deputy United States Attorney

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was served this 25th day of February 2005, by electronic notice on those parties having entered their appearance under the Electronic Filing System (ECF), and by U.S. Mail, postage prepaid, on those parties having requested notice by conventional service.

Susan M. Hunt
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Anita Burns
Assistant Federal Public Defender
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Kansas City, Missouri 64106

/s/ Matt J. Whitworth

Matt J. Whitworth
Deputy United States Attorney

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